

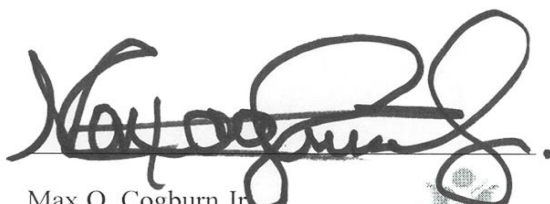
the Federal Rules Advisory Committee (with the approval of the Supreme Court and the acquiescence of Congress) allowed a defendant to waive their personal appearance at arraignment. See Advisory Committee Notes, Fed.R.Crim.P. 10 (2002 Amend.). However, in no uncertain terms, the Advisory Committee made it clear that while a defendant could waive their personal appearance, the proceeding itself could not be waived: “It is important to note that the amendment does not permit the defendant to waive the arraignment itself, which may be a triggering mechanism for other rules.” Id.

While an arraignment is required on every indictment and superseding indictment. Hamilton v. State of Ala., 368 U.S. 52, 55 (1961) (noting under federal law that “an arraignment is a *sine qua non* to the trial itself”), failure to object before judgment makes such error harmless. United States v. Boruff, 909 F.2d 111, 118 (5th Cir. 1990). As this case involves possible penalties that include death, the court believes it is important to correct even harmless error not just to avoid litigation of the issue on appeal and substantial costs, but to assure that all of the rights of this defendant are fully protected.

ORDER

IT IS, THEREFORE, ORDERED that the Clerk of Court is instructed to schedule an arraignment on the Third Superseding Indictment for Ahkeem Tahja McDonald before a United States Magistrate Judge as soon as possible, and note well that this defendant has waived his personal appearance at such proceeding, but not the conduct of the proceeding itself, which is not waivable.

Signed: July 13, 2016


Max O. Cogburn Jr.
United States District Judge